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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/903,944	07/31/1997	TAU-SAN CHOU	089166/0107	3007

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EXAMINER

FOX, DAVID T

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 08/903,944	Applicant(s) CHOU ET AL.	
	Examiner David T. Fox	Art Unit 1638	

--Th MAILING DATE of this communication appears on the cover sheet with the corresponding address --

THE REPLY FILED 29 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: indefiniteness: claims 76, 78, 90-91, 93, 96 depend upon cancelled claims.

3. ☒ Applicant's reply has overcome the following rejection(s): written description, art, and enablement for process claims only.
4. ☒ Newly proposed or amended claim(s) 1-37, 39-71, 97, 102, 103 and 105-111 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: product claims read on plants made by non-enabled methods.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-5 and 97.

Claim(s) objected to: 38 and 72.

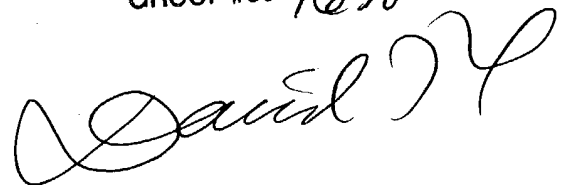
Claim(s) rejected: 6-37, 39-45, 47-71, 73-96, 98-106 and 108-112.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet

Continuation of 10. Other: see attached interview summary and text of declined examiner's amendment.

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180-1638

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An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Rationale for amendments: Currently the After Final amendment of 29 December 2003 raises new indefiniteness issues because claims 76, 78, 90-91, and 93 depend upon cancelled claim 73 and claim 96 depends upon cancelled claim 95; thus the amendment would not be entered without additional examiner's amendments. Also, the product claims still encompass poinsettia plants made by non-exemplified transformation processes such as Agrobacterium-mediated transformation, wherein the Agrobacterium process would cause the integration into the plant genome of at least the right T-DNA border of the Ti-plasmid. Finally, typographical errors in claims 32, 66 and 91 have been corrected.

IN THE CLAIMS:

Claims 32, 66, 76, 78, 86, 90-91, 93 and 96 have been amended as follows:

In claims 32 and 66, line 1, "isopentyenyl" was replaced with ---isopentenyl---.

In claims 32 and 66, line 2, "isopentynyl" was replaced with ---isopentenyl---.

--- Claim 76 (currently amended). [The transgenic poinsettia plant of claim 73,]

A transgenic poinsettia plant comprising at least one expression vector, wherein said expression vector comprises at least one foreign gene, wherein the expression of said foreign gene confers resistance to disease caused by an organism selected from the group consisting of virus, bacterium and fungus; wherein said transgenic poinsettia

plant is produced by a process comprising microprojectile-mediated delivery of the expression vector into embryogenic poinsettia callus, followed by whole plant regeneration therefrom.---

--- Claim 78 (currently amended). [The transgenic poinsettia plant of claim 73,]
A transgenic poinsettia plant comprising at least one expression vector, wherein said expression vector comprises at least one foreign gene, wherein the expression of said foreign gene confers resistance to an insect, [and] wherein said insect resistance gene encodes a protein elected from the group consisting of tryptophan decarboxylase, lectin, and Bacillus thuringiensis toxin; wherein said transgenic poinsettia plant is produced by a process comprising microprojectile-mediated delivery of the expression vector into embryogenic poinsettia callus, followed by whole plant regeneration therefrom.---

---Claim 86 (currently amended). [The] A transgenic poinsettia plant comprising at least one expression vector, wherein said expression vector comprises a first foreign gene encoding chitinase and a second foreign gene encoding beta-1,3-glucanase, wherein the foreign genes are expressed; wherein said transgenic poinsettia plant is produced by a process comprising microprojectile-mediated delivery of the expression vector into embryogenic poinsettia callus, followed by whole plant regeneration therefrom.---

--- Claim 90 (currently amended). [The transgenic poinsettia plant of claim 73,]
A transgenic poinsettia plant comprising at least one expression vector, wherein said expression vector comprises at least one foreign gene, wherein said foreign gene is the Vitreoscilla hemoglobin gene; wherein said transgenic poinsettia plant is produced by a

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process comprising microprojectile-mediated delivery of the expression vector into embryogenic poinsettia callus, followed by whole plant regeneration therefrom.---

--- Claim 91 (currently amended). [The transgenic poinsettia plant of claim 73,]
A transgenic poinsettia plant comprising at least one expression vector, wherein said expression vector comprises at least one foreign gene, wherein said foreign gene is an [isopentenyl] isopentenyl transferase gene, wherein the expression of said [isopentenyl] isopentenyl transferase gene is under the control of a promoter of a senescence-associated gene, wherein said transgenic poinsettia plant is produced by a process comprising microprojectile-mediated delivery of the expression vector into embryogenic poinsettia callus, followed by whole plant regeneration therefrom.---

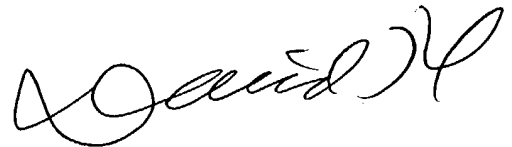
--- Claim 93 (currently amended). [The transgenic poinsettia plant of claim 73,]
A transgenic poinsettia plant comprising at least one expression vector, wherein said expression vector comprises at least one foreign gene, wherein said foreign gene encodes a polypeptide having a MADS box domain, wherein said transgenic poinsettia plant is produced by a process comprising microprojectile-mediated delivery of the expression vector into embryogenic poinsettia callus, followed by whole plant regeneration therefrom.---

--- Claim 96 (currently amended). [The transgenic poinsettia plant of claim 95,]
A transgenic poinsettia plant comprising at least one expression vector, wherein said expression vector comprises at least one foreign gene, wherein said foreign gene is the OsMADS1 or phyA gene, wherein said transgenic poinsettia plant is produced by a

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process comprising microprojectile-mediated delivery of the expression vector into
embryogenic poinsettia callus, followed by whole plant regeneration therefrom.---

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